The Dilemma of the Yemeni Detainees at Guantanamo Bay

By Gregory D. Johnsen and Christopher Boucek

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MORE THAN ONE-THIRD of the remaining 255 detainees at the U.S. detention facility in Guantanamo Bay are Yemenis, representing the single largest national contingent. Since the detention facility opened in early 2002, Yemenis have consistently comprised a sizeable percentage of the population. Other countries, most notably Saudi Arabia, have successfully repatriated many of their nationals, but Yemen has been unable to convince the United States to release detainees into its custody. There is even widespread speculation in both the United States and Yemen that the Yemeni government does not actually want the detainees back and is content to let them remain in U.S. custody.

The Yemeni government, however, maintains in private its stated, public goal to return the detainees to Yemen, charge those it has evidence against and release the rest. For the United States, this has been insufficient, and it has repeatedly sought assurances from the Yemeni government that it will set standardized restrictions before any individuals are released. Part of this hesitation stems from security concerns about what would happen to the detainees once they are returned to Yemen.

This article seeks to examine the dilemma posed by the detention of Yemeni nationals at Guantanamo Bay. Following an overview of Yemen's previous attempts to engage Islamists, the article will focus on some possible risks associated with the repatriation of the Yemeni detainees. This will include identifying individual detainees who have connections to al-Qa`ida members involved in the recent upsurge in terrorist violence in Yemen. It will conclude with a brief look at some possible solutions under consideration.

Extremist Disengagement in Yemen[1]

In recent years, the Yemeni government has engaged in a series of ambitious programs designed to counter Islamist radicalization in the country. These have included traditional poetry recitals, the internationally-supported "Shaykhs Against Terror" initiative, and the use of religious dialogue. While admirable unconventional approaches, some of these efforts—such as religious dialogue—have left many in Washington dissatisfied.

In September 2002, the Yemeni government established the Committee for Religious Dialogue. Led by Judge Hamoud al-Hitar, it was created to interact with security detainees held by the government on suspicion of involvement with Islamist extremists and terrorists. The committee sought to dialogue with these men, and through their religious discussions and debates demonstrate that terrorism based on religious grounds was impermissible. The initiative was the first post-9/11 prison rehabilitation program for extremists, a format that has now been adapted in a number of Arab and Muslim countries.

On September 15, 2002, al-Hitar and three other *ulama* met for the first time with prisoners at the Political Security Organization Center in Sana`a.[2] The committee met with prisoners collectively, and they exchanged questions and responses directly. At the first meeting, it was collectively decided that the Qur'an and the sunna would serve as the basis for the dialogue, with the hadith providing a firm foundation. The dialogue sessions were explained to participants as being comprehensive and that detainees were encouraged to persuade the *ulama* that their understandings of Islam were correct, just as the committee would seek to convince the detainees of their position. Some sources have questioned the effectiveness of the process.[3]

Initial discussions were focused on whether or not Yemen was an Islamic state, and the legality of President `Ali `Abdullah Salih's rule. Sana`a's foreign treaty obligations and relations with non-Muslim states were also discussed, as was the permissibility of killing non-Muslims. The committee worked to demonstrate the legitimacy of the Yemeni government and attempted to show the appropriate rules for jihad. It was clearly stated that those who renounced violence would be eligible for release through a unique presidential amnesty program.[4]

Much of the committee's efforts focused on getting participants to recognize the authority of the state and obtaining assurances from them that participating in violence within the country was forbidden. The "covenant of protection"

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(when the government issues a legal visa) that exists between the state and foreigners was also stressed. In essence, once detainees acceded to these points, they were released. Unlike in other countries that have since adopted extremist rehabilitation programs, the Yemeni government provided freed detainees with little external social support. Many released detainees were absorbed into the military and security services,[5] and there was some attempt made to assist others through a non-governmental organization. These efforts, however, were minimal. Passports were reportedly not confiscated, nor did the Yemeni government maintain close tabs

1 Section based on Christopher Boucek, Shazadi Beg, and John Horgan, "Opening up the Jihadi Debate: Yemen's Committee for Dialogue," in Tore Bjorgo and John Horgan, *Leaving Terrorism Behind* (New York: Routledge, 2008), pp. 181-192.

2 Boucek et al., "Opening up the Jihadi Debate: Yemen's Committee for Dialogue," p. 185.

3 Ibid.

4 Abd al-Mun'im al-Jabri, "Yemeni Interior Minister Discusses Terrorism Issues, Cooperation with US," *26 September*, October 17, 2003.

5 Eric Westervelt, "Growing Repression in Yemen May Feed al-Qaeda," National Public Radio, November 10, 2005.

on former prisoners.[6] A total of 364 individuals were released through the dialogue process. Some have escaped while others have reportedly been killed in Iraq. After some initially promising results, the committee was eventually suspended for a variety of reasons.

The committee's primary objectives were to get participants to recognize the legitimacy of the Yemeni state, not commit violent acts within Yemen, and ensure that foreigners were not targeted in the country. With respect to these objectives, the committee achieved some relative successes. It appears, however, that the committee was less concerned with affecting actual ideological change in participants than it was with obtaining their acquiescence on sensitive political matters. Following the 9/11 attacks, Washington exerted considerable pressure on Sana`a to round up Islamist extremists, terrorists and activists. Many of these individuals had broken no laws. Others had gone abroad to fight in Afghanistan, and some were suspected (tangentially) of involvement in the October 2000 attack on the USS *Cole*. It has been argued that religious engagement and dialogue was thus used as a method to process the large numbers of security detainees, and, in exchange for their allegiance to the Yemeni government, release them from prison.

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The first participants in the program are believed to have fared better than later participants, aligning with those individuals radicalized at home versus those radicalized through the global jihad. Initial participants recognized authority and were thus more susceptible to dialogue and negotiation. Individuals who participated later, the so-called younger generation, did not do as well. When the government eventually attempted to use the committee to deal with combatants from the conflict in Sa`da in the north, it met stiff opposition within Yemen.[7]

Yemeni Population at Guantanamo: Gauging the Risk

Yemen's once promising rehabilitation program now appears to be a failure, while its recent record of releasing convicted al-Qa`ida members has done little to ease U.S. fears. With the exception of a handful of cases, most Yemenis remain in Guantanamo. According to a list produced by the Yemeni government, there are 101 Yemenis currently being held in Guantanamo. Of these, only two—Ramzi bin al-Shibh and Walid bin Attash—have been designated "high value" detainees. Two others have recently been convicted by military commissions in Guantanamo.

The remaining 97 are an eclectic group of intentional, unrepentant combatants and accidental warriors. Yet, separating the detainees into two groups, and determining where different individuals fall on a spectrum of past and potential violence, is a nearly impossible task. Part of the problem in such determinations stems from the circumstances of their incarceration. How capable, mentally or physically, such individuals will be of taking up arms against the United States after years in Guantanamo is difficult to predict from the outside. The situation in Yemen has also changed. Some of these detainees were born and raised in Saudi Arabia and will be returning to a country they know only superficially, if at all. Others will be returning to a country where close family members have been arrested and mistreated as a result of being related to a Guantanamo detainee.

Another difficulty in determining who the detainees are and what they are likely to do if returned to Yemen has to do with the list of detainees initially provided by the Department of Defense in 2006 as a result of a lawsuit brought by the Associated Press. It is possible to read the list either as evidence of an uncooperative Department of Defense or as illustrative of the confusion and lack of knowledge that hampered U.S. efforts in the fearful months after the 9/11 attacks. The most accurate description is probably a combination of both. The Department of Defense seemed to be genuinely confused in the first few years, compiling lists of detainees that identified them as citizens of the wrong country, listing the equivalent of only a first name and the detainees' father's name, or even in some cases merely the *kunya* or nickname of a detainee. Gradually, as its information about the detainees improved, it seems to have corrected many of the early mistakes. By and large, however, these corrections do not seem to have made their way into the public list of detainees. Nor is there a public list in Arabic, which hampers predictions and analysis, as the current list has a number of curious transliterations of Arabic names, many of which appear not to adhere to any standard other than the interrogator's transcription.

Broader Connections

Some of those for whom full and fairly accurate information does exist have been linked to the new generation of al-Qa`ida in Yemen, which has been responsible for, among other operations, the recent September 17 attack on the U.S. Embassy in Sana`a. For instance, four detainees currently being held in Guantanamo had brothers among the 23 al-Qa`ida suspects who escaped from a Yemeni prison in February 2006. The prison break was the opening salvo in the second phase of the war against al-Qa`ida in Yemen, which is still ongoing.

Among the Yemenis currently in Guantanamo are two of four brothers, Ghalib and Tawfiq al-Bayhani, from one of Yemen's leading jihadist families. The other two brothers, Mansur and Zakariya, were among the 23 escapees. Both turned themselves in to Yemeni authorities in late 2006 and were placed under loose house arrest, which required them to periodically sign-in with authorities. Mansur, however, was able to flee the country and made his way to Somalia, where he was killed in a U.S. naval strike by the USS *Chafee* on June 2, 2007.[8] If eventually released

6 Personal interview, Yemeni analyst, Sana`a, July 2007.

7 Ibid.

8 For more information, see Gregory D. Johnsen, "Tracking Yemen's 23 Escaped Jihadi Operatives – Part I," *Terrorism Monitor* 5:18 (2007); Gregory D. Johnsen, "Track-

in Yemen, it is impossible to predict how the two brothers would react to the news of their brother's death at the hands of U.S. forces. Al-Qa`ida in Yemen, for example, has developed a rationale of revenge during the past few years, and it has effectively utilized this in its statements and journals as justification for a number of attacks. While al-Qa`ida has morphed and changed during the years in Yemen, it has clearly demonstrated the existence of a long institutional memory.

The rationale of revenge could also be a factor with Salman al-Rabi`a, whose older brother, Fawaz, was killed by Yemeni forces in October 2006 after masterminding a dual suicide attack a month earlier. Another brother, Abu Bakr, is currently in a Yemeni prison on terrorism charges. One of the other Guantanamo detainees, Ali al-Raymi, is the younger brother of the current deputy commander of al-Qa`ida in Yemen, Qasim al-Raymi, who likely had a leading role in the September attack on the U.S. Embassy. If eventually released by the Yemeni government, it is probable that Ali al-Raymi and other like-minded detainees would join al-Qa`ida in Yemen, giving the organization an influx of new and dedicated members. The last time al-Qa`ida received such a shot in the arm was in the wake of the February 2006 prison break, which sparked the most recent al-Qa`ida campaign in the country.

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Next Steps

There appears to be growing consensus that Guantanamo will eventually need to be shut down. During the campaign, President-elect Barack Obama was critical of the facility and pledged to close it. One notion apparently under consideration by Obama advisers would be to prosecute some detainees in the domestic criminal court system, repatriate others to their countries of origin, and possibly send the remaining highly classified cases to a new special court.[9]

How this will impact the Yemeni nationals remains to be seen. One now abandoned notion had been to finance the construction of a supermax-style prison in Yemen to house returnees. It appears that there is renewed interest in reviving Yemen's Dialogue Committee as a reintegration program for former Guantanamo detainees; however, some recent information that possibly three of the seven U.S. Embassy attackers may have been graduates of al-Hitar's program makes this extremely unlikely.[10] To be modeled in part on Saudi Arabia's relatively successful program to care for Guantanamo returnees,[11] it is presently unclear how such a reintegration system would operate in Yemen. While there had been hope that some Yemenis would be sent back before the end of the Bush administration, this appears increasingly unlikely. Facilities have reportedly been created to accommodate returnees; however, a successful reintegration program will require a detailed program, thorough curriculum, trained and qualified personnel, and massive financing. One possible way to move forward on addressing the plight of the Yemenis held at Guantanamo could be for Washington to financially underwrite the costs associated with applying some of the methodologies being developed in Saudi Arabia and elsewhere to reintegrate former detainees. All told, the costs of finding a solution to this dilemma are far cheaper than the costs of maintaining the status quo.

In the end, the best option could be for the United States to prosecute in civilian courts those it believes it can convict based on the lawful evidence it possesses. Transparency, due process, and the power of the rule of law are some of the strongest weapons in the struggle against violent extremism. For the remainder of the Yemeni detainees, which would likely be a sizeable portion, the United States may find that its best option is to silently partner with the Yemeni government and support a modified hostage system,[12] which has a long tradition in Yemen as a tool of governing. Historically, the United States has found this practice unpalatable, but the current situation may render such criticisms moot. Yemen has also shied away from any private deals with the United States, particularly after 2002 when such a deal was made public by a U.S. leak. Intense and concentrated pressure, however, should ensure Yemen's cooperation. The alternative of just releasing the detainees whom the United States cannot convict will almost certainly result in more deaths in Yemen at the hands of individuals who were once in American custody.

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There are already signs that such a system could work. According to a number of sources in Yemen, during the late summer Yemen was negotiating an agreement with Qasim al-Raymi that

ing Yemen's 23 Escaped Jihadi Operatives – Part II," *Terrorism Monitor* 5:19 (2007).

9 Matt Apuzzo and Lara Jakes Jordan, "Obama Planning US Trials for Guantanamo Detainees," Associated Press, November 10, 2008.

10 Personal interview, anonymous Yemeni political analyst, November 2008.

11 Christopher Boucek, "The Saudi Process of Repatriating and Reintegrating Guantanamo Returnees," *CTC Sentinel* 1:1 (2008).

12 Different governments in Yemeni history (for instance, the imams in addition to the current republican system of government) have utilized a hostage system that kept relatives, traditionally males, under the control of the state to ensure the good behavior of their relatives. The United States could use this option with the "in-between" detainees–those it does not have enough evidence against to prosecute but are considered too dangerous to release–as a weapon to splinter al-Qa`ida by turning the organization against itself. This is not so much outsourcing detention as it is using one of al-Qa`ida's main strengths, tight-knit relationships, against it.

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would have taken him off the warpath. Although negotiations eventually broke down, what al-Raymi reportedly wanted is telling: the release of al-Qa`ida suspects in Yemeni prisons. The outline of the story seems to be confirmed by al-Raymi's authorial absence from the fifth issue of *Sada al-Malahim*,[13] which was written in August and September, but only released on November 9. Had the negotiations been successful, it is possible that the September 17 attack on the U.S. Embassy would have never taken place. It did, of course, and al-Raymi returned to writing for *Sada al-Malahim* in its sixth issue.

The hostage system would also further fracture al-Qa`ida in Yemen by exacerbating tensions and loyalties within the group. Such a system would force Qasim al-Raymi and numerous others to ask themselves whether they are more loyal to Nasir al-Wahayshi—the *amir* of al-Qa`ida in Yemen—or to someone such as Ali al-Raymi—who was once in Guantanamo and is now being held by the Yemeni government. The answer is far from clear, but even forcing individuals in al-Qa`ida to face such a question would likely do more to disrupt the group's Yemeni branch than have years of counter-attacks. This system would require the United States to temper many of its criticisms of Yemen's opaque practice of individual deals with terrorists, such as Jamal al-Badawi and Jabir al-Banna. Years of Guantanamo, however, have removed the good courses of action from the table and left the United States with only a limited set of options.

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13 *Sada al-Malahim* is a jihadist publication in Yemen.